

EXHIBIT 9

In the Matter of

Case No. 18-cv-05775 (ERK)(TAM)

STAR AUTO SALES OF BAYSIDE, INC., et al.

v.

VOYNOW, BAYARD, WHYTE AND COMPANY LLP, et al.

Deposition of Randall Franzen

Wednesday, February 15, 2023



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New York, NY 10018
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.
(d/b/a STAR TOYOTA OF BAYSIDE),
STAR AUTO SALES OF QUEENS, LLC
(d/b/a STAR SUBARU), STAR HYUNDAI
LLC (d/b/a STAR HYUNDAI), STAR
NISSAN, INC. (d/b/a STAR NISSAN),
METRO CHRYSLER PLYMOUTH INC. (d/b/a
STAR CHRYSLER JEEP DODGE) STAR AUTO
SALES OF QUEENS COUNTY LLC (d/b/a
STAR FIAT) and STAR AUTO SALES OF
QUEENS VILLAGE LLC (d/b/a STAR
MITSUBISHI),

Plaintiffs,

-against-

VOYNOW, BAYARD, WHYTE AND COMPANY
LLP, HUGH WHYTE, and RANDALL
FRANZEN,

Case No.
18-cv-05775
(ERK) (TAM)

Defendants.

-----x
February 15, 2023
10:37 a.m.

Videotaped Deposition of RANDALL
FRANZEN, taken by Plaintiffs, held at the
offices of Milman Labuda Law Group PLLC,
3000 Marcus Avenue, Suite 3W8, Lake Success,
New York, before Lisa Hiesiger, a Shorthand
Reporter and Notary Public within and for the
State of New York.

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2 A P P E A R A N C E S :

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4 MILMAN LABUDA LAW GROUP PLLC
5 Attorneys for Plaintiffs
6 3000 Marcus Avenue, Suite 3W8
Lake Success, New York 11042

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By: MICHAEL MULE, ESQ.
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10 MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN P.C.
11 Attorneys for Defendants
12 620 Freedom Business Center, Suite 405
King of Prussia, Pennsylvania 19406

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By: MAUREEN P. FITZGERALD, ESQ.
mpfitzgerald@mdwcg.com

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Also Present:

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JACQUELINE CUTILLO

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ROBERT SEIBEL

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HUGH WHYTE

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MICHAEL KOUFAKIS

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STEVE RAMBAM (Via Teleconference)

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ANDREW GEDACHT, Videographer

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2 IT IS HEREBY STIPULATED AND AGREED, by and
3 among counsel for the respective parties hereto,
4 that the filing, sealing and certification of the
5 within deposition shall be and the same are
6 hereby waived;

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8 IT IS FURTHER STIPULATED AND AGREED that
9 all objections, except as to form of the
10 question, shall be reserved to the time of the
trial;

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12 IT IS FURTHER STIPULATED AND AGREED that
13 the within deposition may be signed before any
14 Notary Public with the same force and effect as
if signed and sworn to before the Court.

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2 THE VIDEOGRAPHER: The date is
3 February 15th, 2023. The time is 10:37
4 a.m. We are located at the offices of
5 Milman Labuda Law Group PLLC, 3000 Marcus
6 Avenue, Lake Success, New York.

7 We are taking the deposition of
8 Randall Franzen in the matter of Star Auto
9 Sales of Bayside Inc. et al. versus
10 Voynow, Bayard, Whyte and Company LLP,
11 et al., pending the in U.S. District
12 Court, Eastern District of New York, case
13 number 18-cv-05775 (ERK) (TAM).

14 My name is Andrew Gedacht and I'm the
15 video specialist with the Little Reporting
16 Company. The court reporter is Lisa
17 Hiesiger, also with the little Reporting
18 Company.

19 At this time I would ask the
20 attorneys to please introduce themselves
21 for the video record. Please state your
22 name, the firm with which you are
23 affiliated and whom you represent, after
24 which the court reporter will swear in the
25 witness.

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2 MR. MULÈ: Good morning, Michael Mulè
3 from Milman Labuda Law Group PLLC. We are
4 the attorneys for the plaintiffs, the
5 various Star entities in this lawsuit.

6 MS. FITZGERALD: Good morning,
7 Maureen Fitzgerald from Marshall Dennehey
8 representing all the defendants.

9 R A N D A L L F R A N Z E N, having been first
10 duly sworn by Lisa Hiesiger, a Notary Public, was
11 called as a witness and testified as follows:

12 EXAMINATION BY MR. MULÈ:

13 Q. Good morning, Mr. Franzen.

14 A. Good morning.

15 Q. You are represented by counsel,
16 correct?

17 A. Correct.

18 Q. I will be referring to Voynow,
19 Bayard, Whyte and Company LLP simply as Voynow in
20 this proceeding. Do you understand?

21 A. Yes.

22 Q. I'll be referring to the various Star
23 entities collectively as Star. Is that okay?

24 A. Okay.

25 Q. Same basic instructions, you

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2 approximately 90 percent, that's my best
3 guesstimate.

4 Q. You used the word "guesstimate."
5 When you say guesstimate, it puts a little less
6 certainty in it. Is it an estimate where you
7 have some basis for that estimate or is it just a
8 wild guess?

9 A. You're currently asking me a question
10 over a long period of time, these are massive
11 companies, we were doing tax work, we had tax
12 engagements, we had tax audits, we had various
13 things, I cannot stand here and tell you exactly.
14 If you gave me a piece of paper and a computer, I
15 can write down and give you a better guesstimate,
16 but that's what I'm giving you, a guesstimate,
17 but that's what I can only guess based upon your
18 question.

19 Q. As far as interim visits, that was
20 part of what Voynow did at Star, correct?

21 A. If I understand your question, what
22 Voynow did at Star was tax engagements. The tax
23 engagements, interim tax engagements, was what we
24 called interim, they were between periods for the
25 year-end. Again large companies, a lot of

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2 income, a lot of tax numbers that had to be
3 calculated and we had big time estimates we had
4 to watch.

5 New York City was also under, if you
6 made X amount of dollars with the city returns,
7 you had to pay quarterlies as you went. So these
8 interim, tax interim visits were interim between
9 interim periods.

10 Q. I don't know if that responds to my
11 question. You did have these interim visits,
12 correct?

13 A. We had tax interim visits between
14 year-ends.

15 Q. So you're calling them tax interim
16 visits now, other people called them interim
17 visits, right? You've heard other people call it
18 interim visits, right?

19 A. Repeat your question.

20 Q. Have you heard other people call
21 these interim visits, not interim tax visits?

22 A. Yes, I've heard that.

23 Q. So regardless of what you want to
24 call it, how many times a year did you come to
25 Star for those types of visits?

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2 A. We normally came to Star in the
3 interim period as far as anywhere around the June
4 to August/September type time, and again for
5 estimating quarterly taxes, to figure out what
6 was owed. In our tax interim periods, again call
7 them tax interim periods, whatever you want to
8 call them, it's interim between the tax return
9 periods.

10 Q. So for that interim period, how many
11 times a year approximately would you visit Star?

12 A. Normally, and again this is my best
13 guess at this point in time, normally we would
14 show up, I said earlier somewhere between June,
15 July, August, September period for that
16 second/third quarter estimate.

17 Then we would do around
18 November/December, we would be there for the tax
19 planning estimate of time to try to determine
20 again the first quarter, if a first quarter, a
21 January payment was due and what type of tax
22 numbers that had to be paid out at the end of --
23 before the end of the year.

24 Q. So you'd come in the June to
25 August/September time period, then you would come

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2 again in November/December for tax planning.

3 Would you come any other time of the year?

4 A. We would show up in January to do the
5 year-end tax work.

6 Q. So as you sit here today, is your
7 best estimate that on a yearly basis you would
8 come to Star approximately three times a year?

9 A. Correct.

10 Q. As far as interim visits, not tax
11 planning, not year-end, approximately how many
12 interim visits would you come to Star, once a
13 year or more than once a year?

14 A. Again my best guess at this point in
15 time would be we normally would come up once a
16 year between that June/July, whenever the client
17 asked us to come up to that in that period.

18 However, as I stated again, there were other
19 times that we would come up for audits, tax
20 audits, Department of Labor audits, 941 audits,
21 8300 audits. So there's times that we could be
22 up there an additional period working on an
23 audit, working on what was requested by the
24 client. All related to taxes.

25 Q. As far as the interim period visit,